



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 11, 2022

VIA ECF

The Honorable Mary Kay Vyskocil
United States District Court
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Fishman and Giannelli*, 20 Cr. 160 (MKV)

Dear Judge Vyskocil:

As stated in the Government's January 10, 2022 submission, the Government writes to submit Lisa Giannelli and Seth Fishman's jointly-proposed revisions and objections to the Government's requests to charge, which were filed yesterday. (*See* ECF No. 648). Language that appears in black text is uncontested. Where there is disagreement, the Government's proposed language is in blue text, whereas the defense's proposed revisions have been included in red text, with defense comments where provided.

The parties also jointly submit a proposed jury verdict form.

The parties respectfully request leave to supplement these charges and submit revised proposals where necessary to reflect the actual evidence at trial and the rulings of the Court.

Defense counsel for Seth Fishman has written the Government stating that he specifically reserves the right "to seek Jury Instructions regarding lesser included offenses, to the extent that those requests are supported by the evidence at trial," and "to supplement these requests with proposed theory-of-defense instructions as the record develops at trial, *see e.g. US v. Rowland*, 826 F 3d 100, 115 (2d Cir. 2016), and to file additional objections and comments on the Government's proposed Instructions as the evidence warrants, including instructions on the legal effect of the defendant's "Good Faith" efforts to comport his conduct with exemptions to the FDA Statutory regime charged in the Indictment for veterinary practice, and the export of what are otherwise defined as 'drugs.'").

Finally, the defense asks for 48 hours to submit additional proposed general requests to charge in the format ordered by the Court. The Government has no objection to such an extension as it is anticipated that such general requests to charge will be uncontroversial in nature and only applicable if the record at trial warrants them.

The Government is prepared to discuss all the parties' pre-trial submissions and motions *in limine* at the upcoming conference on January 13, 2022.

Respectfully submitted,

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United States Attorney

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